



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/816,095

04/01/2004

Dominic A. Cataldo

BGT 2-007

9481

266

7590

10/12/2006

MUELLER AND SMITH, LPA
MUELLER-SMITH BUILDING
7700 RIVERS EDGE DRIVE
COLUMBUS, OH 43235

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

TH

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/816,095 | CATALDO ET AL. | |
| | Examiner | Art Unit | |
| | NEIL LEVY | 1615 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15,17-20,39-41 are is/are pending in the application.
- 4a) Of the above claim(s) 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-12,14,15,17-20 and 39-41 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☒ Claim(s) 1-15,17-20,39-41 are are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13 stands withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention & species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/06/06

. Claim Rejections - 35 USC § 112

Claims 1-3,5-12,14,15,17-20,39-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's pointing to page 14 as support is not seen as evoking the word "substantial absence" - we have no suggestions, but page 14 indicates the absence of ADDED water or organic solvents while not addressing any solvents normally found with the liquid pesticides. Neither do we see any removal of this solvent; it would seem that applicant must be using 100% of the forms of each of the liquid pesticides, abnormal standard formulations.

Applicant has removed the ammonium ion; it is not clear where support lies for lack of requirement of ammonium ion.

The rejections of record will be re-instated when the new matter is removed, ammonium replaced, & the action made final.

Response to Arguments

Applicant's arguments filed 7/24/06 have been fully considered but they are not persuasive. Applicant's arguments are to the effect that the cited prior art does not show the use of intercalated clay, nor the elected inventive species, & that onium ions are ineffective. Applicant argues also that claim 1 is to EXFOLIATED intercalated clays; it's not. As to the onium ions, applicant has removed them, just as in BEALL . As to the species, OHNO recites pyrethroids, but not Bifenthrin.

Claims 8 & 9 are not withdrawn, as they include the elected species.

It is noted that the preamble of claims 1, 39 is all inclusive of living plants, animals microbes, in fact anything living , as opposed to inanimate or dead species. There is no support for any of the claimed methods of control, as nothing is presented except release rates of specific polymeric forms styled as "barriers", in the instant claim language. The species intended to be controlled, or actives (as of claim 15) & polymers (as of claim 14) should be recited to clearly identify the subject matter of the invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

Art Unit: 1615

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NEIL LEVY
Primary Examiner
Art Unit 1615
